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11 OAKLAND POLICE DEPARTMENT, CHIEF
12 WAYNE TUCKER, SERGEANT BERNARD ORTIZ

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MIGUEL ORTEGA, BENJAMIN ORTEGA, A
Minor, By and through his Guardian Ad
Litem, ANA ROSA ORTEGA,

Plaintiffs,

v.

CITY OF OAKLAND, OAKLAND POLICE
DEPARTMENT, WAYNE TUCKER, In His
Capacity as the Police Chief of the City of
Oakland, RAMON J. ALCANTAR,
Individually and in his Capacity as a Police
Officer for the City of Oakland, BERNARD
ORTIZ, Individually and in his Capacity as a
Police Officer for the City of Oakland, DOES
1 THROUGH 200,

Defendants.

Case No. C07-02659 JCS

**STIPULATED PROTECTIVE
ORDER**

1 **I. PURPOSES AND LIMITATIONS**

2 Disclosure and discovery activity in this action are likely to involve production
3 of confidential, proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation would be
5 warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the
6 following Stipulated Protective Order. The parties acknowledge that this Order does not
7 confer blanket protections on all disclosures or responses to discovery and that the
8 protection it affords extends only to the limited information or items that are entitled under
9 the applicable legal principles to treatment as confidential. The parties further
10 acknowledge, as set forth in Section 10, below, that this Stipulated Protective Order
11 creates no entitlement to file confidential information under seal; Civil Local Rule 79-5 sets
12 forth the procedures that must be followed and reflects the standards that will be applied
13 when a party seeks permission from the court to file material under seal.

14 **II. DEFINITIONS**

15 **A. Party:** Any party to this action, including all of its officers, directors,
16 employees, consultants, retained experts, and outside counsel (and their support staff).

17 **B. Disclosure or Discovery Material:** All items or information,
18 regardless of the medium or manner generated, stored, or maintained (including, among
19 other things, testimony, transcripts, or tangible things) that are produced or generated in
20 disclosures or responses to discovery in this matter.

21 **C. “Confidential” Information or Items:** Information (regardless of
22 how generated stored or maintained) or tangible things that qualify for protection under
23 standards developed under F.R.Civ.P.26(c).

24 **D. “Highly Confidential — Attorneys’ Eyes Only” Information or
25 Items:** Extremely sensitive “Confidential Information or Items” whose disclosure to
26 another Party or non-party would create a substantial risk of serious injury that could not

1 be avoided by less restrictive means.

2 **E. Receiving Party:** A Party that receives Disclosure or Discovery
 3 Material from a Producing Party.

4 **F. Producing Party:** A Party or non-party that produces Disclosure or
 5 Discovery Material in this action.

6 **G. Designating Party:** A Party or non-party that designates information
 7 or items that it produces in disclosures or in responses to discovery as "Confidential" or
 8 "Highly Confidential — Attorneys' Eyes Only."

9 **H. Protected Material:** Any Disclosure or Discovery Material that is
 10 designated as "Confidential" or as "Highly Confidential — Attorneys' Eyes Only."

11 **I. Outside Counsel:** Attorneys who are not employees of a Party but
 12 who are retained to represent or advise a Party in this action.

13 **J. House Counsel:** Attorneys who are employees of a Party.

14 **K. Counsel (without qualifier):** Outside Counsel and House Counsel
 15 (as well as their support staffs).

16 **L. Expert:** A person with specialized knowledge or experience in a
 17 matter pertinent to the litigation who has been retained by a Party or its counsel to serve
 18 as an expert witness or as a consultant in this action and who is not a past or current
 19 employee of a Party or of a competitor of a Party's and who, at the time of retention, is not
 20 anticipated to become an employee of a Party or a competitor of a Party's. This definition
 21 includes a professional jury or trial consultant retained in connection with this litigation.

22 **M. Professional Vendors:** Persons or entities that provide litigation
 23 support services (e.g., photocopying; videotaping; translating; preparing exhibits or
 24 demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and their
 25 employees and subcontractors.

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1 **III. SCOPE**

2 The protections conferred by this Stipulation and Order cover not only
3 Protected Material (as defined above), but also any information copied or extracted
4 therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus
5 testimony, conversations, or presentations by parties or counsel to or in court or in other
6 settings that might reveal Protected Material.

7 **IV. DURATION**

8 Even after the termination of this litigation, the confidentiality obligations
9 imposed by this Order shall remain in effect until a Designating Party agrees otherwise in
10 writing or a court order otherwise directs.

11 **V. DESIGNATING PROTECTED MATERIAL**

12 **A. Exercise of Restraint and Care in Designating Material for**
13 **Protection.** Each Party or non-party that designates information or items for protection
14 under this Order must take care to limit any such designation to specific material that
15 qualifies under the appropriate standards. A Designated Party must take care to
16 designate for protection only those parts of material, documents, items, or oral or written
17 communications that qualify — so that other portions of the material, documents, items, or
18 communications for which protection is not warranted are not swept unjustifiably within the
19 ambit of this Order.

20 Mass, indiscriminate, or routinized designations are prohibited. Designations
21 that are shown to be clearly unjustified, or that have been made for an improper purpose
22 (e.g., to unnecessarily encumber or retard the case development process, or to impose
23 unnecessary expenses and burdens on other parties), expose the Designating Party to
24 sanctions.

25 If it comes to a Party's or a non-party's attention that information or items
26 that it designated for protection do not qualify for protection at all, or do not qualify for the

1 level of protection initially asserted, that Party or non-party must promptly notify all other
2 parties that it is withdrawing the mistaken designation.

3 **B. Manner and Timing of Designations.** Except as otherwise provided
4 in this Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise
5 stipulated or ordered, material that qualifies for protection under this Order must be clearly
6 so designated before the material is disclosed or produced.

7 Designation in conformity with this Order requires:

8 1. For information in documentary form (apart from transcripts of
9 depositions or other pretrial or trial proceedings), that the Producing Party affix the legend
10 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL — ATTORNEYS' EYES ONLY" at the top
11 of each page that contains protected material. If only a portion or portions of the material
12 on a page qualifies for protection, the Producing Party also must clearly identify the
13 protected portion(s) (e.g., by making appropriate markings in the margins) and must
14 specify, for each portion, the level of protection being asserted (either "CONFIDENTIAL" or
15 "HIGHLY CONFIDENTIAL — ATTORNEYS' EYES ONLY").

16 A Party or non-party that makes original documents or materials
17 available for inspection need not designate them for protection until after the inspecting
18 Party has indicated which material it would like copied and produced. During the
19 inspection and before the designation, all of the material made available for inspection
20 shall be deemed "HIGHLY CONFIDENTIAL — ATTORNEYS' EYES ONLY." After the
21 inspecting Party has identified the documents it wants copied and produced, the
22 Producing Party must determine which documents, or portions thereof, qualify for
23 protection under this Order, then, before producing the specified documents, the
24 Producing Party must affix the appropriate legend ("CONFIDENTIAL" or "HIGHLY
25 CONFIDENTIAL—ATTORNEYS' EYES ONLY") at the top of each page that contains
26 Protected Material. If only a portion or portions of the material on a page qualifies for

1 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by
 2 making appropriate markings in the margins) and must specify, for each portion, the level
 3 of protection being asserted (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL —
 4 ATTORNEYS' EYES ONLY").

5 **C. Inadvertent Failures to Designate.** If timely corrected, an
 6 inadvertent failure to designated qualified information or items as "Confidential" or "Highly
 7 Confidential — Attorneys' Eyes Only" does not, standing alone, waive the Designating
 8 Party's right to secure protection under this Order for such material. If material is
 9 appropriately designated as "Confidential" or "Highly Confidential — Attorneys' Eyes Only"
 10 after the material was initially produced, the Receiving Party, on timely notification of the
 11 designation, must make reasonable efforts to assure that the material is treated in
 12 accordance with the provisions of this Order.

13 **VI. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

14 **A. Timing of Challenges.** Unless a prompt challenge to a Designating
 15 Party's confidentiality designation is necessary to avoid foreseeable substantial
 16 unfairness, unnecessary economic burdens, or a later significant disruption or delay of the
 17 litigation, a Party does not waive its right to challenge a confidentiality designation by
 18 electing not to mount a challenge promptly after the original designation is disclosed.

19 **B. Meet and Confer.** A Party that elects to initiate a challenge to a
 20 Designating Party's confidentiality designation must do so in good faith and must begin the
 21 process by conferring directly (in voice to voice dialogue; other forms of communication
 22 are not sufficient) with counsel for the Designating Party. In conferring, the challenging
 23 Party must explain the basis for its belief that the confidentiality designation was not
 24 proper and must give the Designating Party an opportunity to review the designated
 25 material, to reconsider the circumstances, and if no change in designation is offered, to
 26 explain the basis for the chosen designation. A challenging Party may proceed to the next

1 stage of the challenge process only if it has engaged in this meet and confer process first.

2 **C. Judicial Intervention.** A Party that elects to press a challenge to a
3 confidentiality designation after considering the justification offered by the Designating
4 Party may file and serve a motion under Civil Local Rule 7 (and in compliance with Civil
5 Local Rule 79-5, if applicable) that identifies the challenged material and sets forth in detail
6 the basis for the challenge. Each such motion must be accompanied by a competent
7 declaration that affirms that the movant has complied with the meet and confer
8 requirements imposed in the preceding paragraph and that sets forth with specificity the
9 justification for the confidentiality designation that was given by the Designating Party in
10 the meet and confer dialogue.

11 The burden of persuasion in any such challenge proceeding shall be on the
12 Designating Party. Until the court rules on the challenge, all parties shall continue to
13 afford the material in question the level of protection to which it is entitled under the
14 Producing Party's designation.

15 **VII. ACCESS TO AND USE OF PROTECTED MATERIAL**

16 **A. Basic Principles.** A Receiving Party may use Protected Material that
17 is disclosed or produced by another Party or by a non-party in connection with this case
18 only for prosecuting, defending, or attempting to settle this litigation. Such Protected
19 Material may be disclosed only to the categories of persons and under the conditions
20 described in this Order. When the litigation has been terminated, a Receiving Party must
21 comply with the provisions of section 11, below (FINAL DISPOSITION).

22 Protected Material must be stored and maintained by a Receiving Party at a
23 location and in a secure manner that ensures that access is limited to the persons
24 authorized under this Order.

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26 **B. Disclosure of "CONFIDENTIAL" Information or Items.** Unless

1 otherwise ordered by the court or permitted in writing by the Designating Party, a
2 Receiving Party may disclose any information or item designated CONFIDENTIAL only to:
3 1. The Receiving Party's Outside Counsel of record in this action,
4 as well as employees of said Counsel to whom it is reasonably necessary to disclose the
5 information for this litigation and who have signed the "Agreement to Be Bound by
6 Protective Order" that is attached hereto as Exhibit A;
7 2. The officers, directors, and employees (including House
8 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this
9 litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit
10 A);
11 3. Experts (as defined in this Order) of the Receiving Party to
12 whom disclosure is reasonably necessary for this litigation and who have signed the
13 "Agreement to Be Bound by Protective Order" (Exhibit A);
14 4. The Court and its personnel;
15 5. Court reporters, their staffs, and professional vendors to whom
16 disclosure is reasonably necessary for this litigation and who have signed the "Agreement
17 to Be Bound by Protective Order" (Exhibit A);
18 6. During their depositions, witnesses in the action to whom
19 disclosure is reasonably necessary and who have signed the "Agreement to Be Bound by
20 Protective Order" (Exhibit A). Pages of transcribed deposition testimony or exhibits to
21 depositions that reveal Protected Material must be separately bound by the court reporter
22 and may not be disclosed to anyone except as permitted under this Stipulated Protective
23 Order.
24 7. The author of the document or the original source of the
25 information.

26 C. **Disclosure of "HIGHLY CONFIDENTIAL — ATTORNEYS' EYES**

1 **ONLY” Information or Items.** Unless otherwise ordered by the court or permitted in
2 writing by the Designating Party, a Receiving Party may disclose any information or item
3 designated “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY” only to:

4 1. The Receiving Party’s Outside Counsel of record in this action,
5 as well as employees of said Counsel to whom it is reasonably necessary to disclose the
6 information for this litigation and who have signed the “Agreement to Be Bound by

7 Protective Order” that is attached hereto as Exhibit A;

8 2. Experts (as defined in this Order) (1) to whom disclosure is
9 reasonably necessary for this litigation, (2) who have signed the “Agreement to be Bound
10 by Protective Order” (Exhibit A);

11 3. The Court and its personnel;

12 4. court reporters, their staffs, and professional vendors to whom
13 disclosure is reasonably necessary for this litigation and who have signed the “Agreement
14 to Be Bound by Protective Order” (Exhibit A); and

15 5. the author of the document or the original source of the
16 information.

17 D. **Procedures for Approving Disclosure of “HIGHLY**

18 **CONFIDENTIAL — ATTORNEYS’ EYES ONLY” Information or Items to “Experts”**

19 1. Unless otherwise ordered by the court or agreed in writing by
20 the Designating Party, a Party that seeks to disclose to an “Expert” (as defined in this
21 Order) any information or item that has been designated “HIGHLY CONFIDENTIAL —
22 ATTORNEYS’ EYES ONLY” first must make a written request to the Designating Party
23 that (1) identifies the specific HIGHLY CONFIDENTIAL information that the Receiving
24 Party seeks permission to disclose to the Expert, (2) sets forth the full name of the Expert
25 and the city and state of his or her primary residence, (3) attaches a copy of the Expert’s
26 current resume, (4) identifies the Expert’s current employer(s), (5) identifies each person

1 or entity from whom the Expert has received compensation for work in his or her areas of
2 expertise or to whom the expert has provided professional services at any time during the
3 preceding five years, and (6) identifies (by name and number of the case, filing date, and
4 location of court) any litigation in connection with which the Expert has provided any
5 professional services during the preceding five years.

6 2. A Party that makes a request and provides the information
7 specified in the preceding paragraph may disclose the subject Protected Material to the
8 identified Expert unless, within seven court days of delivering the request, the Party
9 receives a written objection from the Designating Party. Any such objection must set forth
10 in detail the grounds on which it is based.

11 3. A Party that receives a timely written objection must meet and
12 confer with the Designating Party (through direct voice to voice dialogue) to try to resolve
13 the matter by agreement. If no agreement is reached, the Party is seeking to make the
14 disclosure to the Expert may file a motion as provided in Civil Local Rule 7 (and in
15 compliance with Civil Local Rule 79-5, if applicable) seeking permission from the court to
16 do so. Any such motion must describe the circumstances with specificity, set forth in
17 detail the reasons for which the disclosure to the Expert is reasonably necessary, assess
18 the risk of harm that the disclosure would entail and suggest any additional means that
19 might be used to reduce that risk. In addition, any such motion must accompanied by a
20 competent declaration in which the movant describes the parties' efforts to resolve the
21 matter by agreement (i.e., the extent and the content of the meet and confer discussions)
22 and sets forth the reasons advanced by the Designating Party for its refusal to approve the
23 disclosure.

24 In any such proceeding the Party opposing disclosure to the Expert
25 shall bear the burden of proving that the risk of harm that the disclosure would entail
26 (under the safeguards proposed) outweighs the Receiving Party's need to disclose the

1 Protected Material to its Expert.

2 **VIII. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
3 **OTHER LITIGATION.**

4 If a Receiving Party is served with a subpoena or an order issued in other
5 litigation that would compel disclosure of any information or items designated in this action
6 as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL — ATTORNEYS' EYES ONLY," the
7 Receiving Party must so notify the Designating Party, in writing (by fax, if possible)
8 immediately and in no event more than three court days after receiving the subpoena or
9 order. Such notification must include a copy of the subpoena or court order.

10 The Receiving Party also must immediately inform in writing the Party who
11 caused the subpoena or order to issue in the other litigation that some or all the material
12 covered by the subpoena or order is the subject of this Protective Order. In addition, the
13 Receiving Party must deliver a copy of this Stipulated Protective Order promptly to the
14 Party in the other action that caused the subpoena or order to issue.

15 The purpose of imposing these duties is to alert the interested parties to the
16 existence of this Protective Order and to afford the Designating Party in this case an
17 opportunity to try to protect its confidentiality interests in the court from which the
18 subpoena or order issued. The Designated Party shall bear the burdens and expenses of
19 seeking protection in that court of its confidential material – and nothing in these provisions
20 should be construed as authorizing or encouraging a Receiving Party in this action to
21 disobey a lawful directive from another court.

22 **IX. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

23 If a Receiving Party learns that, by inadvertence or otherwise, it has
24 disclosed Protected Material to any person or in any circumstance not authorized under
25 this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing
26 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all

1 copies of the Protected Material, (c) inform the person or persons to whom unauthorized
2 disclosures were made of all the terms of this Order, and (d) request such person or
3 persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached
4 hereto as Exhibit A.

5 **X. FILING PROTECTED MATERIAL**

6 Without written permission from the Designating Party or a court order
7 secured after appropriate notice to all interested persons, a Party may not file in the public
8 record in this action any Protected Material. A Party that seeks to file under seal any
9 Protected Material must comply with Civil Local Rule 79-5.

10 **XI. FINAL DISPOSITION**

11 Unless otherwise ordered or agreed in writing by the Producing Party, within
12 sixty days after the final termination of this action, each Receiving Party must return all
13 Protected Material to the Producing Party. As used in this subdivision, "all Protected
14 Material" includes all copies, abstracts, compilations, summaries or any other form of
15 reproducing or capturing any of the Protected Material. With permission in writing from the
16 Designating Party, the Receiving Party may destroy some or all of the Protected Material
17 instead of returning it. Whether the Protected Material is returned or destroyed, the
18 Receiving Party must submit a written certification to the Producing Party (and, if not the
19 same person or entity, to the Designating Party) by the sixty day deadline that identifies
20 (by category, where appropriate) all the Protected Material that was returned or destroyed
21 and that affirms that the Receiving Party has not retained any copies, abstracts,
22 compilations, summaries or other forms of reproducing or capturing any of the Protected
23 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of
24 all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney
25 work product, even if such materials contain Protected Material. Any such archival copies
26 that contain or constitute Protected Material remain subject to this Protective Order as set

1 forth in Section 4 (DURATION), above.

2 **XII. MISCELLANEOUS**

3 **A. Right to Further Relief.** Nothing in this Order abridges the right of
4 any person to seek its modification by the Court in the future.

5 **B. Right to Assert Other Objections.** By stipulating to the entry of this
6 Protective Order no Party waives any right it otherwise would have to object to disclosing
7 or producing any information or item on any ground not addressed in this Stipulated
8 Protective Order. Similarly, no Party waives any right to object on any ground to use in
9 evidence of any of the material covered by this Protective Order.

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2 **IT IS SO STIPULATED.**
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4 DATED: JANUARY 4, 2008
5

6 JOHN A. RUSSO, City Attorney
7 RANDOLPH W. HALL, Assistant City Attorney
8 JAMES F. HODGKINS, Supervising Trial Attorney
9 CHARLES E. VOSE, Senior Deputy City Attorney
10

11 By: _____ /s/
12 Attorneys for Defendants
13 CITY OF OAKLAND, OAKLAND POLICE DEPARTMENT,
14 CHIEF WAYNE TUCKER, SGT. BERNARD ORTIZ
15

16 DATED: JANUARY 4, 2008
17

18 LAW OFFICES OF STEVEN R. JACOBSEN
19 CATHERINE R. DOUAT, ESQ.
20

21 By: _____ /s/
22 Attorney for Plaintiffs
23

24 DATED: JANUARY 4, 2008
25

26 BURNHAM & BROWN
27 JOHN VERBER, ESQ.
28

29 By: _____ /s/
30 Attorney for Defendant
31 OFFICER RAMON ALCANTAR
32

ORDER

Pursuant to stipulation of the parties and good cause appearing therefore, the above Protective Order is hereby ordered in this case. Said order shall remain in effect during the pendency of this action.

IT IS SO ORDERED.

Dated: _____

JOSEPH C. SPERO
U.S. District Court Magistrate Judge